

REGINA

v.

KALAVATI RALACA

[SUPREME COURT, 1972 (Grant J.), 16th November]

Revisional Jurisdiction

Criminal law—sentence—order for imprisonment in default of payment of fine—such order not to be made to operate concurrently with a substantive sentence of imprisonment—Minor Offences Act 1971, s.4—Penal Code (Cap. 11) s.30(1) (d) (i).

It is wrong in principle, and also contrary to the provisions of section 30(1) (d) (i) of the Penal Code, to order a term of imprisonment which is imposed in default of payment of a fine to run concurrently with a substantive sentence of imprisonment.

Order by the Supreme Court on review of order made by the Magistrate's Court.

G. Trafford-Walker for the prosecution.

Respondent in person.

16th November 1972

GRANT J.:

On the 2nd day of August 1972, the respondent was convicted on his own plea of the offence of being drunk and disorderly in a public place, contrary to Section 4 of the Minor Offences Act, 1971, and the trial Magistrate was informed that on the 19th day of July 1972 the respondent had been sentenced to a term of eighteen months' imprisonment in respect of another offence (Criminal Case No. 865/72). The trial Magistrate thereupon proceeded to impose a fine of \$20, in default of payment the respondent to suffer imprisonment for thirty days and this sentence of imprisonment was ordered to run concurrently with the sentence of imprisonment imposed on the 19th day of July 1972.

It is wrong in principle to order a term of imprisonment which is imposed in default of payment of a fine to run concurrently with a substantive sentence of imprisonment, as the effect is that if the offender omits to pay the fine he avoids any punishment for the offence which he has committed. It is also a breach of Section 30(1) (d) (i) of the Penal Code which provides that a term of imprisonment imposed in default of payment of a fine shall be in addition to any other imprisonment to which the offender may have been sentenced.

A The matter has accordingly been referred to this Court under its revisional jurisdiction and I order the default sentence of 30 days' imprisonment to run consecutively to the sentence of eighteen months' imprisonment imposed on the 19th day of July, 1972.

Order varied.